



# Dispute Resolution Services

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Residential Tenancy Branch  
Office of Housing and Construction Standards

## **DECISION**

Dispute Codes      MNR-DR, OPR-DR, FFL

### Introduction

This hearing dealt with the landlord's application pursuant to the *Residential Tenancy Act* (the *Act*) for:

- an Order of Possession for unpaid rent, pursuant to sections 46 and 55;
- a Monetary Order for unpaid rent, pursuant to sections 26 and 67; and
- authorization to recover the filing fee from the tenants, pursuant to section 72.

The tenant did not attend this hearing, although I left the teleconference hearing connection open until 9:43 a.m. in order to enable the tenant to call into this teleconference hearing scheduled for 9:30 a.m. The landlord's agent and son attended the hearing and were given a full opportunity to be heard, to present affirmed testimony, to make submissions and to call witnesses. I confirmed that the correct call-in numbers and participant codes had been provided in the Notice of Hearing. I also confirmed from the teleconference system that the landlord's agent and son and I were the only ones who had called into this teleconference.

At the start of the hearing the agent testified that the landlord learned that the tenant moved out on or around October 22-23, 2021. As this tenancy has already ended, I dismiss the landlord's application for an Order of Possession with leave to reapply.

### Preliminary Issue- Amendment

The landlord's application for dispute resolution lists tenant D.R., tenant J. Unknown, as well as four additional tenants named "Unknown Unknown". The agent testified that the only known tenant is tenant D.R. and that the other people living with her are her family members but their names are not known.

I amend the landlord's application for dispute resolution, pursuant to section 64 of the *Act* to list only tenant D.R. as the other unknown parties are not legal names and cannot be parties to this dispute.

### Preliminary Issue Service

The Notice of Dispute Resolution Proceeding Package was made available to the landlord for service on the tenant on October 1, 2021. The agent testified that the landlord posted the landlord's application for dispute resolution including the Notice of Dispute Resolution Proceeding, on the tenant's door on October 23, 2021. No proof of service documents evidencing the above service were entered into evidence.

Rule 3.1 of the Residential Tenancy Branch Rules of Procedure (the "Rules") states:

The applicant must, within three days of the Notice of Dispute Resolution Proceeding Package being made available by the Residential Tenancy Branch, serve each respondent with copies of all of the following:

- a) the Notice of Dispute Resolution Proceeding provided to the applicant by the Residential Tenancy Branch, which includes the Application for Dispute Resolution;
- b) the Respondent Instructions for Dispute Resolution;
- c) the dispute resolution process fact sheet (RTB-114) or direct request process fact sheet (RTB-130) provided by the Residential Tenancy Branch; and
- d) any other evidence submitted to the Residential Tenancy Branch directly or through a Service BC Office with the Application for Dispute Resolution, in accordance with Rule 2.5 [Documents that must be submitted with an Application for Dispute Resolution].

I find that the landlord did not serve the tenant within three days of the Notice of Dispute Resolution Package being made available by the Residential Tenancy Branch, contrary to Rule 3.1 of the Rules.

Section 89(1) of the *Act* states that an application for dispute resolution or a decision of the director to proceed with a review under Division 2 of Part 5, when required to be given to one party by another, must be given in one of the following ways:

- (a) by leaving a copy with the person;
- (b) if the person is a landlord, by leaving a copy with an agent of the landlord;
- (c) by sending a copy by registered mail to the address at which the person resides or, if the person is a landlord, to the address at which the person carries on business as a landlord;
- (d) if the person is a tenant, by sending a copy by registered mail to a forwarding address provided by the tenant;
- (e) as ordered by the director under section 71 (1) [*director's orders: delivery and service of documents*].

Posting is not a permitted method of service of an application for dispute resolution under section 89 of the *Act*.

Rule 3.5 of the Rules states:

At the hearing, the applicant must be prepared to demonstrate to the satisfaction of the arbitrator that each respondent was served with the Notice of Dispute Resolution Proceeding Package and all evidence as required by the Act and these Rules of Procedure.

I find that the landlord failed to prove that the tenant was served with the landlord's application for dispute resolution via posting on October 23, 2021 because no proof of service documents were entered into evidence. I also note that the agent testified that the landlord became aware that the tenant moved out between October 22-23, 2021. I find that at the time of the alleged posting, the tenant did not reside at the subject rental property and could not have received the landlord's application for dispute resolution.

I dismiss the landlord's application for dispute resolution with leave to reapply for failure to prove service, for failure to serve in accordance with section 89 of the *Act*, for failure to serve within three days of receiving the Notice of Dispute Resolution Package, and for failure to serve the tenant at an address at which the tenant resides.

I notified the agent that if the landlord wished to pursue this matter further, the landlord would have to file a new application. I cautioned the agent to be prepared to prove

service at the next hearing, as per section 89 of the *Act* and in accordance with the timelines set out in the Rules.

I find that since the landlord's application was dismissed, the landlord is not entitled to recover the \$100.00 filing fee from the tenant, pursuant to section 72 of the *Act*.

### Conclusion

The landlord's application to recover the \$100.00 filing fee is dismissed without leave to reapply.

The landlord's application for a monetary order for unpaid rent is dismissed with leave to reapply.

This decision is made on authority delegated to me by the Director of the Residential Tenancy Branch under Section 9.1(1) of the *Residential Tenancy Act*.

Dated: November 16, 2021

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Residential Tenancy Branch